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CUTE PRICKLY CRITTER WITH PRESBYOPIA

*Don Herzog**

JUSTICE FOR HEDGEHOGS. By *Ronald Dworkin*. Cambridge, Mass.: The Belknap Press of Harvard University Press. 2011. Pp. xi, 528. \$35.

INTRODUCTION

Ronald Dworkin's¹ latest, long-awaited, and most ambitious book is a puzzle. Truth in advertising first: despite the title, this isn't centrally a book about justice. It's a book about the realm of value—*all* of that realm. Dworkin is most interested here in morality, but really touches on all of it, as a matter of the application of the abstract argument and sometimes in black and white right on the page, from aesthetics to prudence to morality to politics to law to . . . It's fun to read, also frustrating. It stretches out lazily in handling some issues but zooms over others. Readers of Dworkin's essays, which are often published in *The New York Review of Books* and often collected in prior volumes, know that he can be a compelling prose stylist whether or not they're persuaded by his arguments. Stretches of this book are like that, too. But sometimes the book reads as if he's hastily jotted down notes to himself.

Sometimes, indeed, it reads in ways I just can't make sense of. Here's the last sentence of Chapter 9: "Turn to Chapter 10" (p. 218). I was reminded of the filmstrips I was subjected to in grade school, the ones offering illustrations to accompany long-playing records. (Baffled younger readers may Google "filmstrip" and "LP.") When it was time to turn to the next picture, the record would have a funny little bell sound that, to the dismay of our teachers, we all became expert in echoing. Did Dworkin fear that his reader was just then losing patience and needed a bit of prodding to persevere? Or take Dworkin's peroration: "Without dignity our lives are only blinks of duration. But if we manage to lead a good life well, we create something more. We write a subscript to our mortality. We make our lives tiny diamonds in the cosmic sands" (p. 423). Huh? That last metaphor summons up something like mattering from the universe's point of view—who or what is noticing that diamond glittering?—but Dworkin can't mean that. Nor can I figure out what "subscript" could possibly mean here.

But enough by way of preface. I'm going to sketch out a few key elements of Dworkin's position in bald outline. I'm inclined to sympathize with him, at least at the level of broad-gauged sensibility. But I'll suggest that he presses this sensibility in fanciful directions. Not—and this is

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crucial—because I have rival highfalutin philosophical views up my sleeve. Rather because when we recall the work that value judgments of all kinds actually do in our lives, we don't have to worry about the issues that engage Dworkin here.

I. JUSTIFICATION

Often we want to know whether or why we should believe something. Will tax cuts spur economic growth? Is *Bitches Brew* the musical end of the line for Miles Davis's genius? Should you floss your teeth daily? Was the fabled rise of the bourgeoisie all that important in shaping modern politics? More than the Protestant Reformation? And so on.

Philosophers have long contrasted two approaches to justification. On the first or foundationalist view, justification is a matter of starting with self-evident or in some other way undeniable premises and logically deducing whatever follows. This is the model that got Thomas Hobbes, for instance, so excited about geometry as a model for knowledge.² If such justifications were available, they'd deliver all the epistemic confidence anyone could ever want. Alas, they're not; not, anyway, for the sorts of questions I just rattled off.

On the second or coherentist view, justification is a matter of showing how some belief fits in with other things you currently believe. You should floss your teeth daily because it's neither difficult nor costly, tooth decay and gum disease are bad for you (they cause pain, nuisance, expense, the possibility of triggering more serious illness), dentists overwhelmingly agree that flossing works, it's hard to imagine any plausible account on which you shouldn't defer to dentists in such matters, and so on. The traditional anxiety here is that maybe the beliefs you're provisionally taking for granted are false. Well, yes, maybe they are. But you can scrutinize those beliefs, too. You can't scrutinize *all* your beliefs at once; there is no hope for the Cartesian program of pretending you don't believe anything at all and then wondering what you ought to believe. But you can scrutinize *any* actual or suggested belief, or any smallish set of them, instead of pretending that you have self-evident or undeniable starting points to build on. So you might wonder, should you defer to dentists? It's not as though they've been paid off by the floss companies, or anyway you have no reason to think they have, and almost surely if they *had* been, someone would have blown the whistle by now. In turn you might wonder, why be confident that someone would have blown the whistle? But you needn't endlessly keep asking why. Outside philosophy classrooms, the only characters who do that are irritating six-year-olds, not people raising important challenges, and we learn to brush the six-year-olds aside.

This kind of justification is circular. Instead of instantly dismissing circular arguments, we need to think that some circles can be virtuously wide. And we need to pay attention to how we construct these circles—whether

2. JOHN AUBREY, BRIEF LIVES 427–28 (John Buchanan-Brown ed., 2000).

we're respecting what provisionally seem like sound strategies of obtaining and evaluating evidence, arguments, and so on. We can criticize and revise those strategies, too. We can decide that different strategies are attractive in different settings. We needn't be disturbed that those strategies and the boundaries of those settings will shift over time as we learn more. Quite the contrary: we should salute that as a sign of progress.

This second approach is canonical among us pragmatists. Dworkin embraces it perfectly explicitly: "There is no hierarchy of moral principles built on axiomatic foundations" (p. 117). I associate other sensibilities with pragmatism: suspicion of fuzzy abstractions, interest in keeping enquiry close to the ground of practice, curiosity about empirical novelties, and so on. But the chips are finally down with this coherentist or (as we sometimes say) antifoundationalist account of justification. People who think antifoundationalism is an exotic skepticism—I include those who embrace it for that very reason—are confused. In this crucial respect, then, and as has anyway been clear for some time,³ Dworkin is himself a pragmatist.

Yes, years ago Dworkin heartily bashed a view he called pragmatism.⁴ That view sounded like some very crude instrumentalism on which correct legal views are those with good consequences. This enabled Dworkin to club one version of law and economics—not a baby seal worth weeping over anyway. Yes, Richard Posner has described himself as a pragmatist in defending just such a consequentialist view.⁵ And yes, you can cobble together language about the "cash-value" of words and theories as instruments from William James,⁶ who has to count as a real pragmatist, not some modern bastardized version of the breed. But I'd argue that there is nothing in that language, nothing in pragmatism's broader appeal to what works, that collapses into consequentialism, let alone the pinched version of consequentialism defended by recent economists. Think instead of "what works" as what solves a problem. When it comes to physics, say, identifying plasma as another state of matter and charting its characteristics solves a problem—more than one problem—about a series of what otherwise look like anomalies. It works.

The standard modern image for this pragmatist view of justification is that we have a web of beliefs.⁷ It's possible in principle that revising some belief can have far-flung effects across the web or in some apparently remote part of the web. But ordinarily that doesn't happen.⁸ If you change

3. See Ronald Dworkin, *Objectivity and Truth: You'd Better Believe It*, 25 PHIL. & PUB. AFF. 87 (1996).

4. See RONALD DWORKIN, *LAW'S EMPIRE* 87–113, 151–75 (1986).

5. RICHARD A. POSNER, *LAW, PRAGMATISM, AND DEMOCRACY* 59–60, 65 (2003) (describing his view of consequence-based pragmatism).

6. See, e.g., WILLIAM JAMES, *What Pragmatism Means*, in *PRAGMATISM* 43, 53 (1931) (discussing the "pragmatic method" as "bring[ing] out of each word its practical cash-value").

7. See Willard Van Orman Quine, *Two Dogmas of Empiricism*, reprinted in *FROM A LOGICAL POINT OF VIEW* 20, 42–43 (rev. 2d ed. 1980) (providing a canonical statement of this concept).

8. See pp. 154–55.

your mind about flossing, you're most unlikely to have any reason to change your mind about the merits of Miles or the causes of the Great Depression. In this book Dworkin has the perhaps unfortunate habit of deploying the phrase "all the way down,"⁹ which might suggest to some readers some wistful hankering for foundationalist arguments. But all he means is something like "irreducibly so."

Some have always wondered whether we can really justify moral and other evaluative claims. They ask such theatrical questions as what room for value is there in a world of facts? Objective value, they think, is hard to make sense of. In a striking example of this kind of skepticism, J.L. Mackie argued that there's something "queer" about objective value: we need something that's part of the universe and inherently action-guiding.¹⁰ Dworkin argues that those so tempted are illicitly depending on moves we're used to making in understanding how we come to have empirical knowledge (p. 48). It's as if they want there to be what Dworkin mischievously dubs "morons," moral particles that are part of the basic fabric of reality.¹¹

Your knowledge of what a door is—hard, the sort of thing that swings on hinges, more fruitful for entering and leaving rooms than windows and walls, blocking lots of sound and sight, and so often useful to close—depends on the actual causal properties of doors. Now it's hard to see how moral facts causally impinge on you in that way. But instead of worrying about the causal efficacy of moral facts, Dworkin insists, we should jettison the causal-impact view as inappropriate in this setting (p. 75). We should also jettison the thought that causal impact is the only way we can gain knowledge (pp. 72–75). It's enough that we can and do argue about moral judgments: we can give reasons, criticize received views, modify and refine what we think in response to puzzles and objections, and so on. When we deliberate conscientiously, there's no reason to refuse to deploy such categories as "truth" and "knowledge" to describe what we end up with. Truth, after all, isn't a crisply fixed notion.

I'd add to Dworkin's account that "truth" has been used in more startling ways. Here's John Coltrane:

I think the majority of musicians are interested in truth, you know—they've got to be because a musical thing is a truth. If you play and make a statement, a musical statement, and it's a valid statement, that's a truth right there in itself, you know. If you play something phony you know that's phony. All musicians are striving to get as near perfection as they can get. That's truth there, you know.¹²

Coltrane went on to urge that musicians had to "live with as much truth" as they could, to urge in turn that that meant being religious. Whatever one

9. *E.g.*, pp. 131, 387.

10. J.L. MACKIE, *ETHICS: INVENTING RIGHT AND WRONG* 38–42 (1977).

11. *See, e.g.*, pp. 32, 36, 43, 48, 70.

12. LEWIS PORTER, *JOHN COLTRANE: HIS LIFE AND MUSIC* 259 (1998) (quoting Interview by August Blume with John Coltrane, in Balt., Md. (June 15, 1958)).

makes of that, it's premature to say that it's nonsensical to deploy the concept of truth in these domains. It all depends on how the enquiry goes. To take an ostensibly hard-headed idiom I don't myself think much of, it isn't that far from "warranted assertible" to "improvisation worth playing."

I'd also add to Dworkin's account that we could always be wrong. That's the point philosophers call fallibilism. But we can also be wrong about that thing that looks like a door: maybe it's a hyperrealistic painting of a door, or a 3-D holograph of a door, or a former door that's been nailed permanently shut, or Maybe, but still we don't say that we don't "really know" the door is a door; we don't require certainty, strictly speaking, for knowledge. To put the point differently: if you insist on saying, "Well, you don't *know* that slavery is wrong," you'll have to concede that you don't know that your door is a door, either. (Not even if you just walked through it. Your memory could always be confused, you could be caught in some more elaborate deception, and so on.) Or, for that matter, that you don't know what your own name is. Or whether you're actually reading this Review or daydreaming, vividly if perversely, in Vladivostok. Good luck with that.

Dworkin is similarly impatient with meta-ethics. Usually philosophers think that accounts of what moral claims are—expressions of attitudes, proposals of norms that others should adopt, statements about nonnatural properties, and so on—are "second-order" and independent of what one thinks about any actual moral question. So it is one thing to say that affirmative action is unjust, another to say what it is you're doing when you say things like that. If you care about actually sorting out our moral disagreements and dilemmas, you might then be inclined to brush aside meta-ethics or get drowsy when the conversation turns that way. By contrast, Dworkin insists that apparently meta-ethical claims are really first-order moral claims. "Yes, Meta-Ethics Rests on a Mistake," as one chapter subheading has it (p. 67). Plenty of readers are going to balk at this—I'm in their ranks—so I might as well reproduce Dworkin's most vivid attempt to dramatize his view.

Consider this conversation:

A: Abortion is morally wicked: we always in all circumstances have a categorical reason—a reason that does not depend on what anyone wants or thinks—to prevent and condemn it.

B: On the contrary. In some circumstances abortion is morally required. Single teenage mothers with no resources have a categorical reason to abort.

C: You are both wrong. Abortion is never either morally required or morally forbidden. No one has a categorical reason either way. It is always permissible and never mandatory, like cutting your fingernails.

D: You are all three wrong. Abortion is never either morally forbidden or morally required *or* morally permissible.

A, B, and C make moral claims. Does D? Because it is unclear what he could mean by his mysterious claim, we ask him to elaborate.

He might say, first, “Any proposition that assumes the existence of something that does not exist is false. Or (as I sometimes think) neither true nor false. A, B, and C are all assuming that moral duties exist. But no such thing exists, so none of them is making a true statement.” D has fallen victim to morons—or rather the lack of them. If there are morons, and morons make moral claims true or false, then we might imagine that morons, like quarks, have colors. An act is forbidden only if there are red morons in the neighborhood, required only if there are green ones, and permissible only if there are yellow ones. So D declares that, because there are no morons at all, abortion is neither forbidden, nor required, nor permissible. His assumption that there are no morons, he insists, is not itself a moral claim. It is a claim of physics or metaphysics. But he has seriously misunderstood the conversational situation. A, B, and C have each made a claim about what reasons of a certain kind—categorical reasons—people do or do not have. D’s claim that no duties exist means that no one ever has a reason of that kind. So perforce he expresses a moral position; he agrees with C and cannot say, without contradiction, that what C says is false (or neither true nor false). (pp. 42–43)

It’s possible to construe D’s remarks this way. But D is not the most artful meta-ethicist around; or, better, Dworkin isn’t giving him the best run for his money. More sharply, one might say this is not a good interpretation of an opponent’s view on Dworkin’s own understanding of interpretation as showing something in its best light. One might wonder too about how Dworkin would handle D’s evil (or beneficent) twin, the one who thinks moral claims refer to moral reasons. In this debate, he says, “You’re all making claims whose veracity depends on sorting out the moral reasons at stake. I don’t now have anything to say about which view of abortion I myself think is true. But if we carefully sort out the reasons, we’ll have some confidence that we’ve gotten things right.” Indeed, *this* D sounds just like, well, Dworkin. Is he somehow advancing a first-order moral view while officially declining to?

But if we do construe actual-D’s position as Dworkin does, he’s right in thinking that it’s obviously indefensible. We can and do give reasons for our views on abortion. It matters that we get the question right. How could it *not* matter? It looks at first blush as if millions of lives, the autonomy and equality of women, and more could be at stake. If you’re inclined to say we can’t *really* give reasons, or nothing *really* matters, you ought to revisit your criteria for reasons and mattering: they’re too demanding. Whether or not he’s right in the routes he travels to get there—this little dialogue isn’t his only line of argument—Dworkin is commendably impatient with what he calls “external skepticism.” It’s odd to think that you can try to stand outside moral argument and develop a compelling case that moral claims can’t be justified. (Compare the person who knows nothing of archives and primary texts, who has only hazy memories of high school history textbooks, but still offers a spirited argument that historical explanation is impossible.) After you trot out your account, the rest of us still have to figure out what to do with our moral, legal, and political problems. Try taking seriously the claim

that dealing with al-Qaeda or torture, here and abroad, isn't "really" a problem. Good luck with that, too.

What Dworkin calls internal skepticism is another matter. This sort of skepticism arises within moral argument and is then quite unlikely to be wholesale, that is, to apply to moral questions across the board. Imagine this: Look, we've been arguing about abortion for a long time, and I'm genuinely drawn to competing views, and I can't for the life of me see an argument for why one view is better than another. Maybe they're precisely in equipoise. Maybe I'm just uncertain about some of the underlying questions and see no way to bring them into sharper focus. Dworkin agrees that this sort of skepticism is troubling. He argues—here I'm emphatically with him—that it has to be earned, every bit as much as any other moral position needs to be earned (pp. 93, 156). But it's worth remembering that some distinguished philosophers pursuing hard questions in earnest have thrown up their hands and announced that they're stumped. Take Sidgwick's famed dualism of practical reason. After an extraordinarily searching examination of what he takes to be everyday moral views, Sidgwick declares that he sees no way of reconciling the claims of egoism and the impartial promotion of everyone's utility.¹³ His stance is nothing like sophomoric relativism or subjectivism or skepticism.

All this—and there's a whole lot more, much of it whizzing by too fast in Dworkin's text to persuade those inclined to disagree—clears the ground for Dworkin's program. He's committed, he says, to "the unity of value": "The truth about living well and being good and what is wonderful is not only coherent but mutually supporting: what we think about any one of these must stand up, eventually, to any argument we find compelling about the rest" (p. 1). If I'm reading this right, it means that *all* of our evaluative commitments have to finally cohere. Again, not just morality, but also politics, law, aesthetics, prudence, etiquette, fashion, what counts as good writing—you name it. And again, value is its own realm. We can get on with arguing, criticizing, seeking justified beliefs about value without ever trying to anchor value in the world of fact.¹⁴

Dworkin underwrites this program with a remarkable claim. To set the stage for it, let's start with this pedestrian thought: You might think that we

13. 4 HENRY SIDGWICK, *THE METHODS OF ETHICS* 496–509 (7th ed. 1907).

14. My own inclination, for what it's worth, would be to urge the merits of a more sweeping holism instead of embracing a fundamental cleavage between (empirical) fact and value. Notice that if a fact is something rational to believe, then rationality has to be, or anyway to be tightly linked to, a package of values. And it is going to be impossible to cleave off narrowly epistemic values from more sweeping moral and political ones. It's rational, for instance, to believe the provisional outcome of spirited debates among those reasonably well informed with different views where those debates respect ground rules of minimal civility and the like—but this is to place our grasp of fact, including for instance facts about natural science, squarely within the arena of norms of free speech. See HILARY PUTNAM, *MEANING AND THE MORAL SCIENCES* (1978) and especially HILARY PUTNAM, *REASON, TRUTH, AND HISTORY* (1981). And evaluative claims aren't alone in not comfortably fitting the causal-dependence model. Consider knowing that today is Wednesday, or that Lady Macbeth is anxious and guilty, or that $2 + 2 = 4$, or . . .

constantly stumble over genuine conflicts in value. You might think it enough that we can find better and worse ways of dealing with them. Picture yourself at age eighteen confronting different possible life plans. You could have been a lawyer or a doctor, say. These were real possibilities, not just fantasies. But you couldn't have done both. Those lives offer some of the same values: more than a modicum of material comfort, say. But they differ instructively, too. And you—your skills, even your character—would have been different depending on which you chose. But you couldn't somehow have had it all. Indeed, the more talented you were, the more possibilities that beckoned, the scarcer time was. To put it gruesomely, the decision to pursue one kind of life was just the decision to murder indefinitely many counterfactual selves that you could have become. It seems exotic to say that those lives weren't actually valuable, too. You can be uncertain which course is best, urges Dworkin (p. 91). Perhaps, too, the choice hangs on incommensurable values (pp. 92–94). Still, you may well be able to make a reasoned judgment about which life is best. Or, to shift the argument into the register of political theory, Isaiah Berlin famously argued that there is no social world without loss.¹⁵ In this view, we're unavoidably up against tragic conflict: there are genuine values, not merely ends we happen to adopt or wistfully wish we could have adopted, but they're finally incompatible. As Rawls noticed in passing, a liberal society may have more room than other societies, but it can't finally solve this problem, either.¹⁶

We needn't reach for such grand dilemmas to notice what seem intuitively like conflicts of values. Take the neat homespun example that Richard Fallon offered Dworkin (p. 118). A colleague seeks your views on his manuscript. You think the manuscript is bad. Kindness and honesty, both of them surely values, conflict, it seems, because it would be cruel, not kind, to be honest, and dishonest to be kind. Dworkin's response is stunning:

Is there really a conflict here at all? Do honesty and kindness really conflict, even from time to time? If I am to sustain my main claims in this book, about the unity of value, I must deny the conflict. For my claim is not just that we can bring our discrete moral judgments into some kind of reflective equilibrium—we could do that even if we conceded that our values conflict, by adopting some priorities for values or some set of principles for adjudicating conflicts in particular cases. I want to defend the more ambitious claim that there are no genuine conflicts in value that need such adjudication. (p. 119)

Dworkin goes on to deploy a running theme in his argument that I haven't yet touched on. Our moral concepts, he says, are interpretive, not criterial (p. 120). We can always continue to refine them. So perhaps we'll decide on reflection that it isn't actually kind to lie to someone about the quality of his work or that it isn't cruel to tell him the truth. (Or both, I suppose.) That strategy might work with Fallon's example: we might think, for

15. ISAIAH BERLIN, *The Pursuit of the Ideal*, in *THE CROOKED TIMBER OF HUMANITY* 1, 13 (Henry Hardy ed., 1991).

16. JOHN RAWLS, *JUSTICE AS FAIRNESS* 154–55 n.29 (Erin Kelly ed., 2001).

instance, that it's cruel to rub the colleague's nose in how bad the manuscript is or to crow over your own recent triumphant work, but not cruel to tell him in private and sympathetically how and why his draft isn't successful, especially if you go on to offer constructive suggestions for revision. But Dworkin wants his point to be sweepingly general. So here's the remarkable claim: it's not enough to show that there are better and worse ways of resolving conflicts, or even that we ought to strive to find them; rightly understood, there aren't any such conflicts (p. 119).

I note in passing that Dworkin's conviction helps illuminate a striking motif in all his work. It's (vanishingly?) rare for him to concede that some opponent is onto something, but maintain that, all things considered, his own view is better. Instead he frequently asserts or surreptitiously implies that his opponents are confused: they've failed to notice a binary distinction, so their views depend on equivocations. Under the heading "distinctions," the index to *Law's Empire* provides twenty-two entries.¹⁷ This book's index has no such heading, but it too produces quite a few distinctions. I find many of them helpful. Others sometimes make me worry that Dworkin is evading a genuine difficulty.

Dworkin offers another apparently remarkable claim, but he then gives a sensible gloss on it. He suggests that the morally responsible person is required not just to scrutinize her beliefs with care, but to pursue maximal coherence among them. He adopts the metaphor of a filter of moral convictions "surrounding your decision-making will" so that you won't believe or pursue something you shouldn't (p. 107). "Our moral responsibility requires us to try to make our reflective convictions into as dense and effective a filter as we can," he writes (p. 108). "This requires that we seek a thorough coherence of value among our convictions Our convictions are initially unformed, compartmentalized, abstract, and therefore porous," but we can keep reflecting on them, refining them, and reinterpreting them to drive them towards the ideal of maximal coherence and truth (p. 108).

Well, one could take a lot of time doing this. Rather too much time. And the payoffs of doing so are dubious. Compare the case of false descriptive beliefs. You might agree that in some inchoate sense you're better off not having any. You can gravitate toward that idea without adopting any portentous claims about the demands of rationality or logic. (I put aside the important question of useful illusions.) But imagine the dreary and pointless hours you could spend ransacking your cognitive inventory and trying to discard the falsehoods: "Wait, maybe Wilkes-Barre isn't the capital of Pennsylvania. No, right, Harrisburg is." If this mattered—if, say, you were supposed to meet an old friend at the state capitol building—it would be worth sorting out. But just because it's false? No way. Imagine fretting about whether you're right in remembering that the middle button on the sweater you wore at your eleventh birthday party was loose.

Notice that for Dworkin the thought "You should in principle strive to make your evaluative commitments maximally coherent" must be just another

17. DWORKIN, *supra* note 4, at 458.

first-order claim about value, jostling alongside “You should take more care dealing with people at work” and “You should stop wearing that ugly shade of green” and “The GOP’s policies are massively unjust, so you should vote Democratic.” Again it looks as if the pursuit of maximal coherence would be extraordinarily time-consuming. And then, given the remarkable commitment to what the unity of value means, we can’t just shrug and seek better and worse ways of reconciling the pursuit of coherence with other commitments we properly have. Perhaps that’s why Dworkin goes on to offer his sensible gloss on this second thought: “[I]t would be absurd to expect everyone to engage in the kind of philosophical reflection that any full-blown attempt at moral responsibility would demand. So moral interpretation, like so much else of high importance, is a matter for social formation and also for division of labor.”¹⁸ Dworkin goes on to suggest that moral and political philosophers have an important role to play in helping a society sort out and improve its evaluative commitments. This suggestion won’t appeal to everyone, but it’s worth remembering that he wouldn’t have these philosophers devoting their time to meta-ethics.

II. LIMITS

Dworkin is one such philosopher. His views have been strongly continuous over the decades, even if critics might think that, say, his famous principle/policy distinction has shifted its content now and again. (Dworkin does acknowledge here an important architectonic shift in his own jurisprudence: he no longer believes that law and morality are independent systems of norms (p. 402).) But of course no single book could conceivably offer a complete and unified account of value. Don’t fantasize about a book one hundred thousand pages long. No one, no committee, could write it. No one could or should read it. At one point, Dworkin writes:

I have written a good deal about political morality, particularly in my books *Life’s Dominion*, *Sovereign Virtue*, and *Is Democracy Possible Here?* so the remaining chapters can be more summary. I ask you to treat those books as incorporated into this one by reference, and I direct you to particular portions of those books that amplify arguments summarized here. (p. 328)

Even so, *Justice for Hedgehogs* is often hasty, even peremptory, in the topics it does take up. Consider three examples.

One: Dworkin distinguishes living well and having a good life (pp. 195–99). “[L]iving well means striving to create a good life, but only subject to certain constraints essential to human dignity” (p. 195). Sensibly, Dworkin

18. P. 109. A similar gloss would be helpful in thinking about Dworkin’s jurisprudence. Grant for the sake of argument that what Hercules does is perfect. It doesn’t follow that any individual judge ought to emulate Hercules as best she can. Perhaps she’ll make such a mess of things that she’d be better advised to, oh, defer to original meaning, or legislative intent, or whatever else. More profitable would be thinking about how and why the whole judiciary could be seen as pursuing law as integrity. Even such mechanical rules as “grant certiorari when there’s a circuit split” turn out to be illuminating in that light.

doesn't think you have a good life if you satisfy whatever desires or ends you happen to have. I'm with him in thinking people can be sadly mistaken about what's worth pursuing. But if you pursue interests worth pursuing with reasonable success, you've had a good life. Living well is a complex notion, but it depends in part on living within the constraints of morality. It's possible, agrees Dworkin, that sometimes acting immorally could advance one's interests. He imagines a Medici prince whose splendid (not merely showy and wealthy, but cultivated and refined) life depended on treachery and murder (p. 200). I have been intrigued by this slippery terrain,¹⁹ so I was curious to see how Dworkin would handle it. Here's how:

I said earlier that the two ideas—living well and having a good life—need each other. But our Medici prince teaches us that the ideals may whisper opposite advice. Which is then the more fundamental ethical responsibility? Living well. It is ethically irresponsible for you to live less well in order to make your life a better one, and inappropriate for you to take pleasure or pride in your life's goodness when you achieved this at the cost of living badly. (pp. 201–02)

Maybe. But Dworkin's asserting it, however confidently, doesn't make it true. He offers further observations on living well and how it relates to a good life. But nothing he says begins to offer a persuasive argument for this peremptory announcement. That the right is prior to the good, that moral considerations are overriding: these are familiar enough slogans. My own view is that they're implausibly extreme. I know, I know: that view, too, requires justification.

Two: Consider a puzzle that every first-year law student learns in torts. Morality, we think, often requires us to come to the aid of strangers in need, at least when we can do so at little cost or risk to ourselves. But the common law of torts is notoriously unwilling to impose such duties.²⁰ Dworkin offers some structures illuminating the contours of a moral duty to rescue. He notices in passing that the law demurs:

When lawyers are asked to offer examples of the difference between law and morality, they are very likely to say, out of ancient law school tradition, that we have no legal duty to shove a child's face out of a puddle in which it is drowning as we stroll by. (p. 276)

But that's not merely hoary tradition. It's ongoing law. Elsewhere—and this should come as no surprise to readers of his prior work—Dworkin holds that legal rights are a kind of moral rights. The difference is that adjudicative institutions will enforce legal rights coercively without further political authorization (pp. 405–07). So it's incumbent on one committed to so strong a version of the unity of value to ask whether it's right for (current) law and morality to diverge so sharply. One might argue that the common law is confused or pernicious, and urge that tort law be reformed. One might argue that it unacceptably invades others' autonomy to make them legally liable

19. See DON HERZOG, CUNNING (2006).

20. My favorite example is *Osterlind v. Hill*, 160 N.E. 301 (Mass. 1928).

for failing to rescue even if we rightly think them blameworthy when they don't. Less plausibly, one might invoke the usual slippery-slope considerations of whether the law could carve out the cases where rescue is relatively safe and so on. No doubt other moves are available. I expected Dworkin to offer a view. I didn't find one. I don't think I missed it.

Three: Legal positivists routinely deride their opponents as being conceptually unable to make sense of evil or flagrantly unjust laws. I've long thought that the charge applies to some natural law theorists of several centuries ago, but haven't understood why it still gets airtime today. Well, here's Dworkin: "The hideous Nazi edicts did not create even *prima facie* or arguable rights and duties. The purported Nazi government was fully illegitimate, and no other structuring principles of fairness argued for enforcement of those edicts. It is morally more accurate to deny that these edicts were law" (p. 411). Dworkin is contrasting Nazi efforts to the Fugitive Slave Act. He'd count that Act as law, saying it did indeed offer *some* reason of political morality for state actors to do certain things, but urging that those reasons were "undermined" by more important moral claims.

I wonder whether or how this view of the Fugitive Slave Act coheres with what I dubbed the remarkable commitment "that there are no genuine conflicts in value that need such adjudication." Does *undermined* mean that the apparent reasons of political morality were just that, apparent? But why not say instead that they were *overridden* by more important reasons? It's not just that this respects ordinary usage: we can always decide that everyday language is confused or misleading instead of deferring to it. It's that it seems to capture what's really going on.²¹ Worse, if we construe *undermined* as meaning that the moral reasons for enforcing the Fugitive Slave Act were merely apparent, the logical space between that case and the putative laws of the Nazis will collapse. Surely that space can't depend on how seductive the initial appearance of moral force is. So it seems as if Dworkin is willing to cast the Fugitive Slave Act as one in which moral reasons genuinely conflict, but there's a correct way to resolve the conflict. I don't see any salient difference between that and saying, for instance, that kindness and honesty can conflict when your colleague asks for comments on his bad manuscript, but still there are better and worse ways to resolve the conflict, or, for that matter, a best or correct way. Nor, to pick up a point you might already have noticed, do I see how to fit the remarkable commitment together with Dworkin's own eloquent sketch of someone contemplating different life plans. Need that person think the life he spurned had no genuine value? Or that the life he adopted has no disvalue? Can he even make sense of his predicament if he *doesn't* believe that values conflict?

Regardless, in this book's nutshell jurisprudence, to dignify something with the label "law," or for that matter "government"—there's no other way to construe the force of "purported" in the passage I've quoted—is neces-

21. Robert Nozick's *Moral Complications and Moral Structures* remains useful. See ROBERT NOZICK, *Moral Complications and Moral Structures*, in SOCRATIC PUZZLES 201 (1997).

sarily to say that it gives rise to at least some moral claims. As Dworkin has urged elsewhere,²² for some purposes, it might be helpful to talk this way; for others, assuredly not. Virtually none of that richer account appears here,²³ though perhaps we are meant to incorporate it.

The three examples aren't alone; they are mere tips of the iceberg. There are endless conundrums about the realm of value that Dworkin nowhere touches on, not least but not only because his primary focus is morality. And conceive that category as broadly as you like, there's still plenty left to the realm of value. That's not to blame him: How could he cover it all? Again, the very idea of a book actually cashing out the promise of the unity of value, surveying one putative conflict after another in every part of the realm of value and resolving them all, is absurd on its face. Better, perhaps, to see the book as holding out the abstract vision of the unity of value, offering more or less sketchy and partial gestures of how that vision could be fulfilled, and urging us to adopt the vision as our own.

But maybe we don't need to.

III. PRAGMATISM AGAIN

Our everyday lives are beset with practical problems. Some are easy to solve: there's road construction, but your GPS or those helpful detour signs will get you to your destination. Some are harder: you have a blistering migraine, reading and writing are impossible, and you're not ready to give that important lecture tomorrow. Some have overtly moral dimensions: you promised your friend you'd meet him for lunch on the corner, and absurdly it's hailing, but you can't go and he doesn't even have a cellphone. Some look like genuine moral conflicts, even if Dworkin would beg to differ: as leader of the revolutionary forces, Cimourdain must execute Gauvain for treachery; as Gauvain's old tutor, he loves him as a son.²⁴ Here obligations arise from social roles. I'm with Dworkin in thinking it would be a mistake to shrug them off as "merely" conventional. Conventions matter in giving them shape, but for all that they are moral.

There's no shortage of such problems. You can evade some of them, but not often, and sometimes your evasions will create further problems: lying your way out of an embarrassing situation is often like that. So like it or not, we are problem solvers. That may not be what agency essentially means or what's constitutive of it, but it's entirely ordinary.

Our evaluative beliefs orient us toward the landscape of choice. They tell us what's worth doing and how it should be done, what's worth avoiding or fighting against, and so on. Plenty of important choices aren't one-off: the decision to become a doctor or to fight poverty in your community is the beginning of much intricate planning and further action. You need to be attentive to what's actually possible, though you can sometimes take actions

22. See, e.g., RONALD DWORKIN, *JUSTICE IN ROBES* 223–40 (2006).

23. But see the brief thought at page 402.

24. VICTOR HUGO, *QUATREVINGT-TREIZE* 211 (Frank Lee Benedict trans., 1874).

to expand the current realm of possibility. The same is true for what various collective actors—a labor union, a synagogue, a social class, and so on—might be able to do. Value judgments are all about orienting ourselves in a landscape littered with problems. (Though the map imagery is tricky because those judgments also help constitute the terrain.)

When I say these problems are practical, I emphatically don't mean that they have no moral import or that we needn't engage in theory to solve them. I don't, that is, mean even to flirt with two other bastardized pragmatisms. First is the one in which people urge us to just be practical, to do what works, and so on, as if there are only technical concerns at stake. (Homework assignment for the reader: make a long list of politicians promising to escape or transcend ideology, and instead be competent and secure results. No complaints! The assignment is blissfully, painfully, risibly easy.) Second is the one inspiring people to sniff not just at the quest for certainty and foundationalist justifications, but at theory itself. (Stanley Fish often sounds like this.) I mean "practical" in the sense at stake in "practical reason," that is, broadly speaking, reasoning about action. Again some of our practical problems are intensely moral and solving them might demand serious immersion in theory. Take, for instance, the political dispute between those favoring more robust state assistance for the poor and those decrying that as an invasion of taxpayers' property rights.

How do we know something's a problem in the first place? Here's one way: given whatever beliefs we currently hold, confronting some choice, we realize we don't know what to do or we're torn. Could those beliefs be wrong? Sure—this is just another version of fallibilism—and on reflection we might reinterpret or discard some beliefs and then realize that we don't really face a problem at all. Could we be wrong in doing that? Sure—fallibilism again. With what seem to be more important problems, it behooves us to proceed more carefully. For obvious reasons, we usually do. We can also work to restructure the practices that are generating our problems. If, for instance, you share Dworkin's sense that there's something deeply troubling about the role of money in our democracy, you have a slew of political projects in front of you, not least figuring out how to dismantle or evade increasingly entrenched First Amendment doctrine installed by the Supreme Court in its depressingly long and tangled campaign finance reform opinions.

There's no reason to think that we're triangulating in on some final resting point where we've solved all our problems and made our tangled web of beliefs and practices fully coherent; no reason to suspect that the end of history is around the corner, even a temporally remote corner. Social change is notoriously rapid; environmental change is turning that way, too; the world will continue to hurl new problems at us. It's a daunting prospect, since the problems we're wrestling with are plenty tough enough. That history poses no problems we can't solve is a mindless bit of theodicy, even if you attach such names as Hegel and Marx to it.

Sometimes too we encounter problems we hadn't noticed because critics helpfully bring them to our attention. "If you're so fond of more taxes for public schools, why are you sending your kids to private school?" "Why do

you despise teachers' unions but love the Teamsters?" "If you're anti-choice on abortion because of your devotion to human life, why do you staunchly support capital punishment?" And so on. The critics think we are incoherent. Maybe we'll agree and modify our stances accordingly.

Maybe too we can distinguish the cases. We suggest, say, that we'd love to send our own children to public schools, but the schools just aren't good enough now; but instead of contemptuously disregarding those unable to afford private school, we want to improve the public schools. We suggest that not all unions are alike and work up some relevant distinctions. We suggest that the innocent unborn don't deserve to die, but that some criminals do. And so on.

Such challenges are grist to Dworkin's mill. They depend on some global antecedent commitment to coherence. It's hard in the abstract to make sense of this nonchalant response: "Okay, so my views are contradictory, so what?" And they depend on the thought that we can and do have constructive arguments, not just gotcha barbs; that criticism and justification are real, not illusory, enterprises.

But we needn't pump up this recurrent aspect of our lives of endless problem solving. We needn't think our ultimate project is pursuing the unity of value. We can remind ourselves of some of Dworkin's concessions along the way: some issues are vexingly uncertain; others might raise questions of incommensurability. More important, we can recall that the quest for coherence is another practical project, right along with making more time for our children; for eating better and exercising regularly; for fixing that leaky faucet; for pitching in on local tasks for community improvement; for being less driven, more inclined to daydream or take pointless walks; for finding out more about stricken locales and seeing if there's anything we can do for them, as individuals or as a nation; for improving our lackadaisical piano playing and getting a grip on Gesualdo; and on and on.

I just said it was hard in the abstract to make sense of the nonchalant gesture that having contradictory views doesn't matter. But in some contexts, that gesture can be perfectly sensible. You might justifiably think it is too hard, too time consuming, too distracting to try to sort out whatever the critic is berating you about. You might justifiably be inclined to stick to your knitting, to solve the problem you're immersed in just then, to think that another round of stepping back and taking stock and seeking a more globally coherent view is nothing better than procrastination. You might especially recall the point that revising one part of your web of beliefs is unlikely to lead to far-flung changes across the web. So you might think it prudent to assume that solving your local problem won't require revisiting lots of other commitments. If someone beseeches you to agree that ultimately we'd like everything to hang together in a neatly unified normative package that we can affirm on reflection, that we can confidently label true, you might agree. But you might also wonder what difference it makes. Right here, under your nose, are all those pressing problems. Why gaze longingly at a distant horizon we'll never reach? It's not just that we're tortoises. The horizon keeps moving away as the world keeps generating new problems for us to tackle.

Or, to take a bit of animal imagery more pointed: a fox who's mastered a problem at hand might have nothing to say about how everything fits together. But a hedgehog fretting about that might not ever get around to figuring out how to solve a problem. Or one last contender from the menagerie: imagine the plight of the fourth little pig, the one who never gets around to building any house at all because he's dreaming of the perfect house, and then wondering whether it comports with the best understanding we have of urban planning and whether he'd be consuming an unjust share of resources in constructing it. Right, the wolf eats him for breakfast.

One might play Jeopardy with *Justice for Hedgehogs*. What's the question to which this book is the answer? Or what problem is it meant to solve? Part of it is addressed to people who are lazy or dismissive about normative argument. I wonder how many there actually are. College students notoriously love to spout subjectivist and skeptical views. Usually this is more or less benign, what I call dormitory relativism, and not a pernicious philosophical view at all. When you're a freshman, your dormitory is weird. If you're not from a big city, it's much weirder than your hometown: you encounter people of different religions, people with electric blue hair and nose rings, people who don't eat what you do, and so on. One or two of them live in your room, which isn't palatial anyway; plenty of them use the same bathroom you do. Denying the objectivity of value is a sloppily articulated peace treaty for getting along at close quarters. Would it be better for the freshmen to have a view about the proper place of autonomy and privacy in our lives? Sure. But I'm not inclined to be too dismayed about their sloppy vocabulary, either. Doubtless some professional philosophers are genuinely moral skeptics of the kind Dworkin is opposed to. But they are highly unlikely to find his relatively casual and speedy exposition persuasive. The book has occasional discursive endnotes taking on other philosophers' views in earnest. But they are too compressed, too brief, to do more than signal the general outlines of a view. On the cogency and importance of normative argument, anyway, I'm absolutely with Dworkin on the merits.

But the central thesis of his book, remember, goes beyond the insistence that normative argument is real, that we can and should face criticisms and seek justified views. It's that the whole realm of value is unified, so strongly—recall the remarkable claim—that there aren't even real conflicts requiring us to choose between better and worse accommodations. That strikes me as fanciful. But I am a grubbier pragmatist than Dworkin. Asked for a considered view of that image of unity, I can't figure out what's at stake. So I don't see any need to hazard a view.